

MARK S. BAGULA [CSB No. 171141]  
 DAVINA A. B. BLOOM [CSB No. 236850]  
 DANIEL W. WATKINS [CSB No. 128849]  
 THE WATKINS FIRM  
 A Professional Corporation  
 4520 Executive Drive  
 San Diego, CA 92121  
 (858) 535-1511  
 (858) 535-1581 [Facsimile]

Attorneys for Plaintiff, DAVID J. CHAO

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

DAVID J. CHAO, an individual,

Plaintiff,

vs.

HEALTHSOUTH CORPORATION, a Delaware corporation; SHC SAN DIEGO, INC., a Georgia corporation; SHC MANAGEMENT COMPANY, a Georgia corporation; SURGICAL HEALTH CORPORATION, a Delaware corporation; HEALTHSOUTH SURGERY CENTERS-WEST, INC., a Delaware corporation; SURGICAL CARE AFFILIATES, LLC, a Delaware Limited Liability corporation; ARTHROSCOPIC & LASER SURGERY CENTER OF SAN DIEGO, L.P., and DOES 1 through 100, inclusively,

Defendants.

CASE NO.: 3:07-cv-02408 DMS WMC

**DECLARATION OF MARK S. BAGULA IN SUPPORT OF PLAINTIFF DAVID J. CHAO'S NOTICE OF MOTION TO REMAND REMOVED ACTION TO STATE COURT**

Judge: Hon. Dana M. Sabraw  
 Dept.: Courtroom 10  
 Date: February 29, 2008  
 Time: 1:30 p.m.

I, MARK S. BAGULA, declare as follows:

1. I am an attorney duly licensed to practice law before the Courts in the State of California. I am a partner with The Watkins Firm, APC, and am the attorney of record for Plaintiff, David J. Chao in this action. I possess personal knowledge of the facts set forth below and could and would, if called upon to do so, competently testify thereto.

2. I make this declaration in support of the Plaintiff David J. Chao's Motion to Remand Removed Action to State Court.

///

1           3.     I believe the State Court will resolve the claims in Plaintiff's Complaint more  
2 expeditiously due to "fast track" rules, which will save all parties litigation costs.

3           4.     We have been unsuccessful at attempts to resolve this litigation through informal  
4 settlement talks. In light of that, it is Plaintiff's intention to sue Arthur Casey, the former HealthSouth  
5 executive, for fraud, as he is believed to be personally responsible for the local manipulation of funds  
6 and accounting by HealthSouth. I took Mr. Casey's deposition in March of 2007 wherein Mr. Casey  
7 indicated that his responsibilities included identifying expenses on a facilities books and ascertaining  
8 whether or not they have been appropriately recorded or classified. Based on information and belief, Mr.  
9 Casey's residence is now in San Diego County, California, as it was in 2007.

10          5.     Based on information and belief, the General Partner, SHC San Diego, Inc. has no other  
11 business than managing a San Diego surgery center, namely Arthroscopic and Laser Surgery Center of  
12 San Diego, L.P. (hereinafter "Partnership"). There are employees working at the surgery center,  
13 performing the General Partner's management functions. There are also local managerial personnel  
14 located in California.

15          6.     On January 17, 2008, I sent an email to Cathleen Fitch, Esq. with the law firm of  
16 Coughlan, Semmer & Lipman. Ms. Fitch is counsel for the removing parties, SCA and HealthSouth.  
17 The email informed her that Plaintiff intended to file a motion to remand unless SCA stipulated to  
18 remand. The email also indicated that Plaintiff would seek attorneys fees for the necessity of filing a  
19 remand motion. A true and correct copy of said email is attached hereto as Exhibit 'A.'

20          7.     On January 22, 2008, my office sent a second letter via email and facsimile to Cathleen  
21 Fitch, Esq. with the law firm of Coughlan, Semmer & Lipman. Again this letter stated Plaintiff's intent  
22 to file a motion to remand unless defendants agreed to same. This letter also notified Ms. Fitch of  
23 Plaintiff's intention to seek attorneys fees and costs in connection filing the motion. A true and correct  
24 copy of the letter is attached hereto as Exhibit 'B.'

25          8.     Defendant Partnership was properly served on November 19, 2007. A true and correct  
26 copy of the certified mail receipt is attached hereto as Exhibit 'C.'

27          9.     It is my understanding that Defendants SHC Management Company, SHC San Diego,  
28 Inc., and HealthSouth Surgery Centers-West Inc. were all previously 100% owned subsidiaries or

1 affiliates of Defendant HealthSouth and are now 100% owned subsidiaries or affiliates of Defendant  
2 SCA.

3 10. My hourly rate for civil litigation is \$250.00 per hour. Based upon community standards  
4 and the experience of the attorneys involved, these rates are reasonable, given my level of experience,  
5 which includes thirteen years of litigation experience.

6 11. The hourly rate for the Associates working on this case is \$220.00 per hour, which is the  
7 hourly rate for associates at The Watkins Firm, A.P.C., and is reasonable based upon community  
8 standards.

9 12. During the month of January, exclusively, the associate working on this case spent 9.3  
10 hours on legal research in preparation for drafting the Motion for Remand. At the rate of \$220.00 per  
11 hour, this totals \$2,046.00.

12 13. During the month of January 2008, exclusively, the Associate working on this case spent  
13 16 hours drafting the pleading documents involved in the Motion for Remand. At the rate of \$220.00 per  
14 hour, this totals \$3,520.00.

15 14. During the month of January 2008, exclusively, the Associate working on this case spent  
16 4 hours drafting this declaration, the Notice of Motion and the Proposed Order. At the rate of \$220.00  
17 per hour, this totals \$880.00.

18 15. During the month of January 2008, exclusively, I have spent 5 hours conducting legal  
19 research, drafting and revising the Motion for Remand. At the rate of \$250.00 per hour, this totals  
20 \$1,250.00.

21 16. I anticipate that 2 hours will be spent on research and review of Defendants' Opposition  
22 to this motion and 6 hours will be spent drafting a Reply brief. At the rate of \$220.00 per hour, this totals  
23 \$1,760.00.

24 ///

25 ///

26 ///

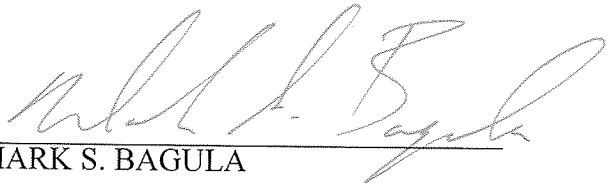
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28 ///

1           17.     The total amount spent on attorneys fees in connection with the drafting of the Motion for  
2 Remand, as well as the accompanying Points and Authorities, Notice of Motion, Proposed Order, and this  
3 Declaration is \$9,456.00. This is the amount hereby requested by Plaintiff to compensate for the  
4 necessity of filing this motion.

5           I declare under penalty of perjury under the laws of the State of California that the foregoing is  
6 true and correct.

7  
8 DATED: January 23, 2008

  
MARK S. BAGULA

# **EXHIBIT A**

**Mark Bagula**

---

**To:** cfitch@csllaw.com  
**Subject:** Chao v. Healthsouth, Remand Motion  
**Attachments:** Microsoft Photo Editor 3.0 Picture

Dear Ms. Fitch

I wished to inform you that we will be filing a motion for remand, unless you make it unnecessary.

The basis for the motion is the fact that there is not complete diversity, due to the partnership center and the general partner having their principal and only places of business in San Diego. Considering the fact that this involves a medical practice, legally, this is the proper designation of residency. The complaint makes it clear that the partnership is essential to relief, and also not "nominal." In addition, there has been a failure to join in the action by all of the served defendants. Finally, Healthsouth was served ten days earlier than SCA and is represented by the same counsel in its simultaneously filed joinder. Hence, the thirty day deadline for filing the removal notice has been violated in substance.

I would suggest you stipulate to remand. Otherwise, we will be seeking our attorney fees for the necessity of filing a motion.

If you wish to discuss this matter, please call.

Thank you,

Mark

**Mark S. Bagula**  
*Managing Partner, Litigation*  
**THE WATKINS FIRM, APC**  
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San Diego, California 92121  
(858) 535-1511 Telephone  
(858) 535-1581 Facsimile  
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# **EXHIBIT B**





4520 Executive Drive, Suite 105, San Diego, CA 92121  
www.watkinsfirm.com  
Telephone: (858) 535-1511  
Facsimile: (858) 535-1581  
Email: mbagula@watkinsfirm.com

January 22, 2008

Via Email & Facsimile

Cathleen G. Fitch, Esq.  
**Coughlan, Semmer & Lipman, LLP**  
501 West Broadway, Suite 400  
San Diego, CA 92101

Re: David Chao v. HealthSouth Corporation et al.  
Case No: 37-2007-00075329-CU-BC-CTL  
Case No.: 3:07-cv-02408-DMS-WMC

Dear Ms. Fitch,

I understand that Mark Bagula sent you an email on January 17, 2008, informing you that Plaintiff intends to file a motion to remand this action to state court, unless you agree to remand, making a motion unnecessary. The email, a copy of which is attached hereto, apprises you of the issues for which we believe such a motion is necessary and proper.

At this time, we have not received a response from your office regarding this issue. The deadline in which to file the motion is quickly approaching. If you would like to stipulate to remand this case, we would appreciate hearing from you in the next couple of days. Otherwise, we will be forced to file the motion and seek costs and attorneys fees.

If you wish to discuss the above, please feel free to contact me anytime.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kristy L. Fischer".

Kristy L. Fischer, Esq.

[Enclosure]

**Mark Bagula**

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If you wish to discuss this matter, please call.

Thank you,

Mark

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# **EXHIBIT C**

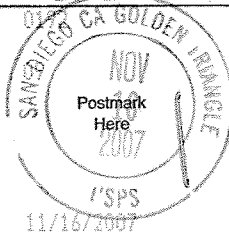
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**CENTER OF SAN DIEGO, L.P.**  
 Street, Apt. No., or PO Box No. **C/O Registered Agent**  
 City, State, ZIP+4 **CT CORPORATION SYSTEM**  
**1201 PEACHTREE ST NE**  
**ATLANTA GA 30361**

PS Form 3800, J

Instructions